

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Roth	Team: Team # 3	CCRB Case #: 200717293	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 11/29/2007 5:30 PM	Location of Incident: Broadway and Putnam Avenue	Precinct: 83	18 Mo. SOL 5/29/2009	EO SOL 5/29/2009	
Date/Time CV Reported Fri, 11/30/2007 8:34 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/30/2007 8:34 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Hardell	24109	936730	073 PCT
2. POM Kaz Daughtry	28690	940052	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Shynell Hines	29313	932793	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Thomas Hardell	Force: PO Thomas Hardell used physical force against § 87(2)(b)	
B.POM Thomas Hardell	Force: PO Thomas Hardell used a chokehold against § 87(2)(b)	
C.POM Kaz Daughtry	Force: PO Kaz Daughtry struck § 87(2)(b) with a nightstick.	

Synopsis

§ 87(2)(b) filed this complaint on November 30th, 2007, via telephone at the CCRB. § 87(2)(b) stated that at approximately 5:30pm on November 29th, 2007, on Broadway near the corner of Putnam Street in Brooklyn, he was transporting windows from the house of one of his friends to the house of another. Two officers, identified via investigation as PO Thomas Hardell and PO Kaz Daughtry stopped § 87(2)(b) and asked § 87(2)(b) if he had a receipt for the windows. The officers then attempted to search § 87(2)(b) and when he refused, PO Hardell pushed § 87(2)(b) face-first onto the hood of a parked car and proceeded to punch him in his face and body multiple times (**Allegation A**). PO Hardell then got on the hood of the vehicle and placed his knee into § 87(2)(b)'s neck causing his breathing to become restricted (**Allegation B**). PO Daughtry then struck § 87(2)(b) several times with a nightstick (**Allegation C**). § 87(2)(b) was handcuffed and searched, at which time the officers discovered a marijuana cigar on § 87(2)(b)'s person. He was arrested for transporting building materials without a valid receipt, resisting arrest, and possession of marijuana.

§ 87(2)(g)

This case was originally assigned to former CCRB Investigator Henry Cordes. Upon his resignation it was reassigned to the undersigned.

Summary of Complaint

§ 87(2)(b) provided his initial statement to the CCRB on November 30, 2007 (encl. 4) and was interviewed at the CCRB on February 11, 2008 (encl. 5). He is a § 87(2)(b). § 87(2)(b) did not remember what he was wearing at the time of the incident. § 87(2)(b) provided generally consistent statements regarding the incident.

§ 87(2)(b) stated that at approximately 5:30pm on November 29th, 2007, he was moving two 4x4 feet windows from the house of his friend's neighbor, whom he identified as "§ 87(2)(b)" and taking them to another friend, "§ 87(2)(b)" to see if he could sell them to him. "§ 87(2)(b)" lives at § 87(2)(b) between Broadway and Bushwick Avenue. "§ 87(2)(b)" was replacing her windows and gave § 87(2)(b) permission to sell the old ones. § 87(2)(b) was pushing the windows in a shopping cart in the street on Broadway, near the corner of Putnam Street. Two officers in plainclothes pulled up in an unmarked car and approached § 87(2)(b). PO #1 was a 5'7" white male, who was later identified through investigation as PO Thomas Hardell and PO #2 was a 5'7" black male, identified through investigation as PO Kaz Daughtry. PO Hardell asked § 87(2)(b) if he had a bill of sale for the windows and he told them that he did not because he was moving them for a friend. § 87(2)(b) told the officers that he could take them to his friend. PO Hardell said, "Is it alright if I search you?" § 87(2)(b) responded, "For what?" At that point, PO Hardell grabbed § 87(2)(b)'s shoulders and pushed him face first onto the hood of a parked car. § 87(2)(b)'s feet were still on the ground. PO Hardell had not said anything to § 87(2)(b) and § 87(2)(b) shouted, "Police brutality." § 87(2)(b)'s face was against the windshield. PO Hardell jumped onto the hood of the car and put his knee on § 87(2)(b)'s neck, causing § 87(2)(b) to have difficulty breathing. PO Hardell punched § 87(2)(b) in the face and all over his body. § 87(2)(b)'s left eye became bloodshot as a result, at which time PO Daughtry started beating § 87(2)(b) with a "blackjack," which is a long stick with a perpendicular handle. PO Daughtry hit § 87(2)(b) in the back and the backs of his legs, however he could not articulate how many times. The officers handcuffed § 87(2)(b) and searched him, at which point they found a marijuana blunt in a cigarette box in his pocket. Uniformed officers arrived and transported him to the 83rd Precinct. The uniformed officers were both males. § 87(2)(b) pleaded guilty to possession of marijuana because he did not have enough money to post bail. § 87(2)(b)'s arresting officer was PO Hines, who is a female. PO Hines called § 87(2)(b)'s friend, who told PO Hines that § 87(2)(b) was not stealing the windows. § 87(2)(b) sustained bruises to the back of his legs, but he did not obtain medical treatment because his injuries had mostly healed by the time he was released.

Results of Investigation

Identification of officers interviewed

§ 87(2)(b)'s arresting officer was PO Shynell Hines. Upon obtaining her memo book, it was determined that she took the arrest from PO Hardell and was not present for the incident. Because the 73rd Precinct roll call indicated that PO Hardell was working with PO Daughtry at the time of the incident, they were both interviewed. Although § 87(2)(b) indicated that additional uniformed officers responded to the incident and transported him to the stationhouse in a marked RMP, it was determined that these officers' statements would not impact the disposition of the allegations and they were therefore not interviewed. Because PO Hines was not present for the incident, she would not have witnessed any allegations and was therefore not interviewed.

PO Shynell Hines: Memo book

PO Hines' memo book indicates that at 1730 hours on November 29, 2007, there was 1 under by PO Hardell. § 87(2)(b) was arrested for transporting building materials, CPM violation and resisting arrest (encl. 6).

PO Thomas Hardell: Arrest Report

§ 87(2)(b)'s arrest report was prepared by PO Shynell Hines on information provided by PO Hardell. The arrest report indicates that at 5:30 p.m. on November 29, 2009, § 87(2)(b) was arrested at the southeast corner of Halsey Street and Broadway and charged with an unspecified local violation A misdemeanor, resisting arrest, and unlawful possession of marijuana. The narrative indicates that § 87(2)(b) was observed transporting building materials without a valid receipt. Upon placing § 87(2)(b) under arrest, he resisted by refusing to be handcuffed and flailing his arms. During search incident to lawful arrest, § 87(2)(b) was found to be in possession of a marijuana cigar.

Property vouchers were prepared indicating that § 87(2)(b) was in possession of a Boost Mobile phone, battery, and phone case, as well as 27 keys on a ring (encl. 7).

PO Thomas Hardell: CCRB Statement

PO Thomas Hardell was interviewed at the CCRB on May 22, 2008 (encl. 8). PO Hardell is a § 87(2)(b). On November 29, 2007, PO Hardell worked from 12:00 pm until 8:35 pm. His assignment was conditions. He worked with PO Daughtry and was in uniform. He was assigned to a marked RMP. His memo book indicates that he stopped a black male on the corner of Halsey Street and Broadway. The male was transporting building materials without a receipt. Upon attempting to arrest the male, he flailed his arms, struggled with PO Hardell, and held his arms against his body. The male yelled obscenities, causing public alarm. The search incident to arrest revealed a marijuana cigar. The arrest was assigned to PO Hines.

At approximately 5:30 pm on November 29, 2007, PO Hardell observed § 87(2)(b) pushing a cart containing miscellaneous items down the middle of Broadway, at the intersection of Halsey Street. There were window frames and other building materials in the cart. § 87(2)(b) was committing a crime by blocking vehicular traffic and transporting building materials without a valid receipt. There was traffic built up behind § 87(2)(b) in the eastbound lane. PO Hardell did not remember who was driving the vehicle. They pulled up behind § 87(2)(b) and PO Hardell got out of his vehicle. PO Hardell asked § 87(2)(b) to push the cart to the side of the road. § 87(2)(b) moved his cart to the side of the street. PO Hardell asked § 87(2)(b) if he had a valid reason for having the materials. § 87(2)(b) became loud and was unable to explain why he had the items or to produce a receipt for the items. PO Hardell did not remember if PO Daughtry spoke to § 87(2)(b). § 87(2)(b) did not say that he was moving the items for someone else or that they belonged to a friend. No officer asked to search § 87(2)(b). The area is known to be a burglary-prone location. There is a scrap yard further down Broadway where burglars frequently sell stolen building material. PO Hardell was in the burglary team for six months and has taken part in approximately 20 arrests of individuals selling stolen materials to the scrap yard. Because § 87(2)(b) was unable to explain why he had the materials or produce a receipt, PO Hardell attempted to arrest § 87(2)(b).

The officers and § 87(2)(b) had moved to the sidewalk by this point. PO Hardell tried to pull § 87(2)(b)'s arms behind his back from behind him. § 87(2)(b) flailed his arms, refused to be handcuffed and yelled obscenities. § 87(2)(b) yelled, "Get the fuck off me." A crowd started to gather about 30 feet away. The officers instructed § 87(2)(b) to stop resisting several times. PO Daughtry assisted PO Hardell in handcuffing him. Two other officers who happened to be driving by in a marked van witnessed the incident and assisted the officers. The officers pushed § 87(2)(b) against the hood of a parked vehicle to gain control of him. § 87(2)(b)'s back and front made contact with the vehicle because he was rolling around and continuing to resist. PO Hardell could not remember what the two other officers looked like, other than that they were males in uniform. PO Hardell did not remember what precinct the officers were from. No officer got onto the vehicle. PO Hardell remained standing the entire time. No officer made contact with § 87(2)(b)'s neck. No officer put their knees into § 87(2)(b)'s neck. § 87(2)(b) did not appear to have any difficulty breathing. PO Hardell was trying to put § 87(2)(b)'s hands in handcuffs. PO Hardell thought he might have punched § 87(2)(b) in the back or torso. PO Hardell did not know how many times he punched § 87(2)(b) but did so because § 87(2)(b) refused to be handcuffed. PO Daughtry struck § 87(2)(b) with his asp in the leg before and after § 87(2)(b) was put against the car. § 87(2)(b) was eventually handcuffed, at which point a marijuana cigar was found in his pants pocket. The officers took § 87(2)(b) to the 73rd Precinct, where they gave the arrest to PO Hines for unknown reasons. § 87(2)(b) did not have any injuries and did not complain of any.

PO Kaz Daughtry: CCRB Statement

PO Kaz Daughtry was interviewed at the CCRB on July 10, 2008 (encl. 9). He is a § 87(2)(b). PO Daughtry did not remember what hours he worked on November 29, 2007. PO Daughtry did not remember with whom he worked. He was in uniform and was assigned to a marked vehicle. PO Hardell was PO Daughtry's steady partner at the time of the incident. PO Daughtry did not remember this incident and did not provide his memo book at the time of his official statement. He later faxed a copy of his memo book to the CCRB, however it was for an incorrect date. Several attempts were made to obtain PO Daughtry's memo book, from both his former command and current command, however these attempts were ultimately unsuccessful.

Communication Records

Sprint and 911 CD

The Sprint indicates that at 1725 hours on November 29, 2007, the 73rd Precinct lieutenant had one individual under arrest at Madison Street and Broadway. The communications recording reveals only that there was one individual arrested by members of the 73rd Precinct in the vicinity of Broadway and Madison Avenue (encl. 10).

Police Documents

73rd Precinct Roll Call

The 73rd Precinct Roll Call for tour 2 on November 29, 2007 indicates that PO Hines was assigned as the sergeant's operator. The tour 3 roll call indicates that PO Daughtry was assigned to conditions. PO Hardell does not appear on either roll call (encl. 11).

73rd Precinct Command Log

§ 87(2)(b)'s arrest was entered in the 73rd Precinct Command Log at 1740 hours. His physical condition is listed as apparently normal. A notation indicates that he was taken to § 87(2)(b) Hospital at 2005 hours, however this is crossed out. § 87(2)(b) was then taken to Brooklyn Central Booking at 1410 hours on November 30, 2007 (encl. 12).

73rd Precinct Prisoner Holding Pen Roster

The Holding Pen Roster indicates that § 87(2)(b) was logged into the cells at 1740 hours. It is noted that he wanted to go to the hospital for an unknown illness (encl. 13).

Status of Criminal and Civil Cases

On § 87(2)(b) pleaded guilty to criminal possession of marijuana in the 5th degree. He was sentenced to time served (encl. 14). The NYC Comptroller's office reported that as of March 24, 2009, § 87(2)(b) had not filed a Notice of Claim in regards to this incident.

§ 87(2)(c)

§ 87(2)(b)

CCRB History of Subject Officers

PO Thomas Hardell has no substantiated allegation in his 4 year tenure with the NYPD. PO Kaz Daughtry had allegations of gun pointed and threat of force substantiated against him in regards to CCRB number 200710793. The Board recommended charges, however there is no available NYPD disposition (encl. 2).

§ 87(2)(b)

§ 87(2)(b)

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) identified the officers who stopped him as a white male and a black male. PO Hardell acknowledged that he and PO Daughtry were the officers responsible for stopping § 87(2)(b) and were the only officers who initially responded to the incident. PO Hardell is a white male and PO Daughtry is a black male. § 87(2)(b) alleged that the white male pushed him against the car, punched him, and placed his knee into § 87(2)(b)'s neck. Therefore, the force and chokehold allegations are pleaded against PO Hardell. Because § 87(2)(b) alleged that the black male officer hit him with his nightstick, this allegation is pleaded against PO Daughtry.

Undisputed Facts

It is undisputed that at the time of the incident, § 87(2)(b) was pushing a shopping cart in the street that contained building materials for which he did not have a receipt. It is undisputed that PO Hardell pushed § 87(2)(b) against a vehicle and punched him during the incident. It is undisputed that PO Daughtry struck § 87(2)(b) with his nightstick while attempting to place him under arrest.

Disputed Facts

It is disputed whether PO Hardell punched § 87(2)(b) in his face, as well as whether he ever placed a knee into § 87(2)(b)'s neck causing his breathing to be restricted. § 87(2)(b)'s demeanor and level of resistance at the time of the incident is in dispute.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegations Not Pleaded

Since § 87(2)(b) was subsequently arrested for possessing and transporting building materials without proper documentation, and this was the reason that the officers cited for initially stopping him, it was determined that at the time of the stop, the officers had probable cause to arrest § 87(2)(b). Therefore, the stop and search are not being pleaded.

Allegation A: PO Thomas Hardell used physical force against § 87(2)(b)

Allegation C: PO Kaz Daughtry struck § 87(2)(b) with a nightstick.

§ 87(2)(b) alleged that while the officers were placing him under arrest, PO Hardell pushed him onto the hood of the car, punched him several times about the face and body, and that PO Daughtry struck him several times in the legs and back with his nightstick. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(g)

As noted in PD v. Freeman, OATH Index No. 1501/99 (encl. 1),

“In effecting an arrest, a police officer is permitted to use reasonable force to take a suspect into custody or to defend himself from the "imminent use of physical force" by another...Although, in some circumstances, a blow with a nightstick delivered to a vulnerable area of the body might be considered deadly physical force, the three blows with the nightstick to § 87(2)(b) Cardoza's thigh, resulting only in minor bruises, did not rise to the level of deadly force. In this case, respondent's arrest of § 87(2)(b) Cardoza, accompanied by § 87(2)(b) Cardoza's failure to immediately comply with respondent's orders to place his hands on the wall and his visible efforts to resist the officer by clenching his fists and moving forward, justified the force with the nightstick on two grounds. First, respondent was justified in using force to compel § 87(2)(b) Cardoza to submit to the arrest and, second, he was justified in using force to protect himself against § 87(2)(b) Cardoza's threatened resort to force against respondent.”

§ 87(2)(g)

Allegation B: PO Thomas Hardell used a chokehold against § 87(2)(b)

§ 87(2)(g)

Investigator

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: